

Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS,)
LLC,)
Plaintiff)
vs.) 16-cv-02477-VC
THE REGENTS OF THE)
UNIVERSITY OF CALIFORNIA, a)
corporation,)
Defendant)
_____)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
Videotaped Deposition of Douglas V. Shaw, Ph.D.
San Francisco, California
Thursday, December 8, 2016

Reported by:
JOANNE M. FARRELL, RPR, CRR
CSR Nos. 4838(CA) 506(HI) 507(NM)
Job No. 2492592
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1 University of California, the cross-claimant in this
2 case.

3 MR. LIPPETZ: Craig Lippetz, Jones Day, for
4 California Berry Cultivars, Douglas Shaw and Kirk
5 Larson.

6 VIDEOGRAPHER: Thank you. Will the court
7 reporter please swear in the witness.

8 Douglas V. Shaw, Ph.D.,
9 having been administered an oath, was examined and
10 testified as follows:

11 MR. CHIVVIS: Thanks. A few preliminary
12 things to get started here. First, I'd like to
13 designate this transcript "Highly Confidential,
14 Attorneys Eyes Only." It has a number of matters
15 regarding documents and other information that have
16 been designated by one or both parties may come up.
17 I'll deal with de-designations later with counsel,
18 Greg Lippetz here, as we decide which portions of
19 the transcript could be de-designated.

20 Another issue, Mr. Lippetz just alerted me
21 that there was a slight vendor issue, and that some
22 documents of Dr. Shaw's will be coming in a little
23 bit later here. I don't think it should be an
24 issue. I'll review those over the lunch break and
25 hopefully we can resolve that.

1 true?

2 A. That's correct.

3 Q. It was a successful 30 years, right?

4 MR. LIPPETZ: Objection. Vague.

5 THE WITNESS: In my opinion their program
6 was successful, yes.

7 BY MR. CHIVVIS:

8 Q. But in 1986, around that time, they were --
9 they planned to retire; isn't that right?

10 A. There was a plan for both of them to end
11 their employment within the next few years, correct,
12 yes.

13 Q. And that, in part, was why you were hired,
14 to take over the program from them; is that true?

15 MR. LIPPETZ: Objection. Speculation.
16 Go ahead.

17 THE WITNESS: Part of the responsibility
18 that I was hired to retain was to continue the
19 strawberry research program, which included
20 strawberry breeding at that time, yes.

21 BY MR. CHIVVIS:

22 Q. So one of the reasons you were hired was to
23 oversee the university's strawberry breeding program
24 when Royce Bringhurst and Victor Voth retired,
25 correct?

1 A. That's correct.

2 Q. By 1990 you had assumed direction over the
3 university's strawberry breeding program, true?

4 A. That's correct.

5 Q. And part of your role as the person
6 overseeing the university's strawberry breeding
7 program was to breed new strawberry varieties; is
8 that right?

9 A. That had been a traditional role and, yes,
10 I was acting to breed strawberry cultivars at that
11 point.

12 Q. So as director of the strawberry breeding
13 program at the university, you took it as part of
14 your charge to breed new strawberry varieties?

15 A. It was part of my charge to breed new
16 strawberry cultivars, yes.

17 Q. And moving into that role, you benefited
18 from the strawberry germplasm that Dr. Royce
19 Bringhurst and Victor Voth developed in the years
20 prior, correct?

21 MR. LIPPETZ: Objection. Vague.

22 THE WITNESS: I think you need to define
23 "benefited from" for me.

24 BY MR. CHIVVIS:

25 Q. You used germplasm in your breeding

1 program, as you were running it for the university,
2 that had been developed by doctor Royce Bringhurst
3 and Victor Voth, correct?

4 A. That's correct.

5 Q. You wouldn't have had the program that you
6 have at the university without their work, would
7 you?

8 MR. LIPPETZ: Objection. Speculation.

9 THE WITNESS: I don't really have facts
10 enough to answer that question whether the program
11 would have been adequate, better, worse. I can't
12 answer that.

13 BY MR. CHIVVIS:

14 Q. I'm not asking that question.

15 A. All right.

16 Q. I'm just asking whether you would have had
17 the program you had without their work.

18 A. I think the answer to that is no, I
19 wouldn't.

20 Q. You would not have developed the varieties
21 that you developed without Dr. Bringhurst and Victor
22 Voth's work, would you?

23 MR. LIPPETZ: Objection. Vague.

24 Go ahead.

25 THE WITNESS: That's very vague. I

1 certainly would not have developed exact varieties
2 that I developed because the varieties that I
3 developed did utilize that material.

4 BY MR. CHIVVIS:

5 Q. So you would have not had the ability to
6 develop the exact varieties that you developed
7 because you would have not had the benefit of Royce
8 Bringhurst and Victor Voth's material, correct?

9 MR. LIPPETZ: Objection. Vague.

10 Go ahead.

11 THE WITNESS: That's extremely vague,
12 again. I would not have been able to develop the
13 exact varieties, that's correct. I think I answered
14 that question.

15 BY MR. CHIVVIS:

16 Q. The Camarosa variety was an important
17 strawberry variety released by the university's
18 strawberry breeding program; isn't that true?

19 A. That's correct.

20 MR. LIPPETZ: Objection to form.

21 Go ahead.

22 THE WITNESS: Again, a little vague, but I
23 think certainly it was a successful variety if
24 that's the question, yes. It became a successful
25 variety.

1 BY MR. CHIVVIS:

2 Q. I'll use your words.

3 A. Okay.

4 Q. Camarosa was a successful strawberry
5 variety released by the university's strawberry
6 breeding program, correct?

7 A. That's correct, yes.

8 Q. It was a hit?

9 MR. LIPPETZ: Objection. Vague.

10 THE WITNESS: It was widely used and
11 created a lot of value for growers. I think
12 that's -- when you say is a hit, if you mean by
13 widely used a hit, that's fine, I agree with that.

14 BY MR. CHIVVIS:

15 Q. Let's use your words.

16 A. Yeah.

17 Q. Camarosa was widely used and created a lot
18 of value for California strawberry growers, correct?

19 A. Correct.

20 Q. Camarosa made millions in royalties; isn't
21 that true? Millions of dollars.

22 A. I don't have the figures but I think it
23 did, yes.

24 Q. And you were involved in the development of
25 Camarosa; isn't that true?

1 A. That's correct.

2 Q. Dr. Royce Bringhurst and Victor Voth were
3 also involved in the development of Camarosa,
4 correct?

5 A. That's right.

6 Q. You're all named as inventors on the
7 Camarosa patent; isn't that true?

8 A. That's correct.

9 Q. The university filed that patent in 1993,
10 does that sound about right?

11 A. That sounds correct, yes.

12 Q. And you've received royalties from that
13 patent; isn't that true?

14 A. That is correct.

15 Q. The university sent you checks for hundreds
16 of thousands of dollars for your share of royalties
17 from the Camarosa patent, right?

18 A. Again, I don't have the figures but I think
19 that's correct. Certainly the university sent me
20 checks for hundreds of thousands of dollars.

21 Q. And some of those checks, hundreds of
22 thousands of dollars in royalties in those checks,
23 was for your share of royalties from the Camarosa
24 patent; isn't that right?

25 A. That's correct.

1 Q. The combined total of the university's
2 checks you've received for the Camarosa patent
3 royalties amounts to more than a million dollars;
4 isn't that right?

5 A. I don't have the figures, but that wouldn't
6 surprise me, no.

7 Q. Wouldn't surprise you?

8 A. Would not surprise me, no.

9 Q. In fact, you received a check last year for
10 your share of Camarosa royalties, right?

11 A. Correct.

12 Q. Royalties from varieties you developed
13 while head of the university strawberry breeding
14 program have made you very wealthy; isn't that true?

15 MR. LIPPETZ: Objection. Vague.

16 THE WITNESS: Define "wealthy" for me.

17 BY MR. CHIVVIS:

18 Q. Do you consider yourself wealthy?

19 A. No.

20 Q. The checks you've received from the
21 university for royalties from the strawberry
22 breeding program have totaled more than \$10 million;
23 isn't that right?

24 A. That's correct.

25 Q. You don't consider that a lot of money?

1 A. Page?

2 Q. On page 11.

3 Do you see the first full paragraph there?

4 A. Yes.

5 Q. It states "Dr. Shaw notified the university
6 of his intent to leave and retire from the
7 university in late 2011"; isn't that right?

8 A. I don't think I have the same document that
9 you have. You said page 11?

10 Q. Yes.

11 A. The first paragraph?

12 Q. The first full paragraph.

13 A. Sorry, sorry.

14 Q. The first full paragraph states --

15 A. Right.

16 Q. -- "Dr. Shaw notified the university of his
17 intent to leave and retire from the university in
18 late 2011"; isn't that right?

19 A. Right. I see that, yes, uh-huh.

20 Q. And that was a truthful and accurate
21 statement when it was made?

22 A. That's correct, yes, uh-huh.

23 Q. So you notified the university of your
24 intent to leave and retire from the university in
25 late 2011; isn't that right?

1 A. That's correct, yes.

2 Q. You did so because you were unhappy; is
3 that fair?

4 MR. LIPPETZ: Objection. Vague.

5 THE WITNESS: I won't say I was unhappy. I
6 would say that we were -- it was time for me to move
7 on and retire and do some other things. Certainly I
8 wasn't satisfied with the situation at the
9 university, but I won't say unhappy, no.

10 BY MR. CHIVVIS:

11 Q. You weren't satisfied with the situation at
12 the university, right?

13 A. I would say that's too simplistic a
14 response. The connection between being unsatisfied
15 with the university was part of the reason. The
16 second reason was it was getting time to retire.

17 Q. And part of the reason was you thought the
18 university strawberry breeding program was not being
19 run like a business, right?

20 MR. LIPPETZ: Objection. Vague.

21 THE WITNESS: Yeah, define what you mean by
22 "run like a business," please.

23 BY MR. CHIVVIS:

24 Q. You thought the program could have made
25 more money?

1 variety, correct?

2 A. That's correct.

3 Q. Probably more than four years, right?

4 A. That's correct.

5 Q. In most cases it would take at least six
6 years?

7 A. I would say a typical time would be six
8 years, correct, yes.

9 Q. And it could take as long as 10?

10 A. In my experience it's never taken 10.

11 Q. Could take as long as eight?

12 A. In my experience we've -- we have never
13 taken eight years, no.

14 Q. Seven?

15 A. Seven sometimes.

16 Q. So it could take as many as seven years
17 from the cross-pollination of the parents to have a
18 finished strawberry variety for release, correct?

19 MR. LIPPETZ: Objection. Vague.

20 THE WITNESS: Given the working definition
21 that you've given me I'd say yes.

22 BY MR. CHIVVIS:

23 Q. All right. Let's back up a little bit.

24 In 2014, at least until November, you were
25 still head of the university strawberry breeding

1 program; is that correct?

2 A. That's correct.

3 Q. But you didn't perform any crosses for the
4 university's program in 2014, did you?

5 A. No, we did not.

6 Q. None at all?

7 A. In 2014, no.

8 Q. So that means no new varieties from 2014
9 crosses will be in the program four to seven years
10 from 2014, right?

11 MR. LIPPETZ: Objection. Speculation.

12 THE WITNESS: From the University of
13 California program, if we didn't make crosses there
14 would be no varieties from that particular potential
15 cross year, that's correct.

16 BY MR. CHIVVIS:

17 Q. There's a gap in the pipeline for that
18 year?

19 A. That would be -- I don't know what you mean
20 "a gap in the pipeline," but there will be no
21 crosses in 2014, therefore no possibility for
22 cultivars from that particular cross, potential
23 cross year.

24 Q. The university lost a year?

25 MR. LIPPETZ: Objection. Vague.

1 THE WITNESS: I -- lost a year for what?

2 BY MR. CHIVVIS:

3 Q. Lost a year in which parents were selected
4 and crossed to introduce new germplasm into the
5 strawberry breeding program?

6 A. I can say that there will be no varieties
7 from that. Whether the university lost a year or
8 not is -- you know, that's a term I can't get my
9 head around, I'm sorry.

10 Q. There will be no new varieties tracing
11 their parentage back to a cross performed in 2014?

12 A. I agree with that, yes.

13 Q. Let's talk about 2013. You were still
14 employed by the university in 2013, correct?

15 A. Correct.

16 Q. You were still head of the university's
17 strawberry breeding program in 2013; isn't that
18 right?

19 A. That's correct.

20 Q. You did perform crosses for the
21 university's strawberry breeding program in 2013,
22 though?

23 A. In 2013 I performed crosses for two
24 experiments, as we had done in the past, with the
25 emphasis on development of disease resistance

1 germplasm. The goal of those crosses was really not
2 cultivar development.

3 Q. But you did perform crosses for the
4 university's strawberry breeding program in 2013,
5 right?

6 MR. LIPPETZ: Objection. Asked and
7 answered.

8 THE WITNESS: One of the things that's been
9 problematic in the language here is the term
10 "strawberry breeding program" has a lot of different
11 meanings and interpretations, and even I use
12 different -- you know, I would say, interpretations
13 of that term at different times.

14 If you talk to people in the plant sciences
15 department and talk about strawberry breeding, that
16 could be any number of different things from very
17 fundamental research, which is our role, and part of
18 our responsibility, maybe the dominant
19 responsibility, up to the more narrow role of
20 cultivar development.

21 And, you know, to say that we were doing no
22 crosses related to strawberry breeding is just plain
23 inaccurate. We were doing no crosses related to
24 the -- specifically aimed at the immediate
25 development of seedlings that would result in

1 commercial cultivars.

2 BY MR. CHIVVIS:

3 Q. So 2013?

4 A. Yes.

5 Q. In your role as a member of the faculty of
6 the university, you performed crosses in 2013?

7 A. Yes.

8 Q. Before you retired from the university you
9 had all of the 2013 progeny from those crosses
10 discarded?

11 A. I think a more accurate way to say that is
12 we didn't retain any of those selections from those
13 experiments that we conducted.

14 Q. So there's no germplasm in the university
15 strawberry proceeding program tracing its lineage
16 back to 2013 crosses, either, right?

17 A. That's correct.

18 Q. So no germplasm in the university
19 strawberry breeding program tracing its lineage back
20 to either 2013 or 2014, right?

21 A. Yes.

22 MR. LIPPETZ: Objection. Asked and
23 answered.

24 THE WITNESS: Yeah, I think I already
25 answered that question "Yes."

1 MR. CHIVVIS: Just to get the record clear
2 I'm going to ask it again and you can object.

3 BY MR. CHIVVIS:

4 Q. There's no germplasm in the university's
5 strawberry breeding program tracing its lineage back
6 to 2013 or 2014, correct?

7 A. I want to avoid the term "germplasm"
8 because I'm not entirely sure what that could
9 entail. It's too vague. But I think what you're
10 trying to get at, there are no selections in the
11 university collection that trace the seedlings that
12 were generated from crosses conducted in 2013 or
13 2014.

14 Q. I'll use your words.

15 A. Okay.

16 Q. There are no selections in the university's
17 strawberry breeding program that trace their lineage
18 back to crosses that were conducted in 2013 or 2014,
19 correct?

20 A. That's correct.

21 Q. And in four to seven years from 2013 or
22 2014, there will be no varieties to release as
23 finished varieties from the university program that
24 trace their lineage back to crosses conducted in
25 2013 or 2014, correct?

1 A. I think that follows, yes.

2 Q. The university has plots near Davis at a
3 place called Wolfskill Experimental Orchard, right?

4 A. That's correct, yes.

5 Q. Test fields?

6 A. Test fields.

7 Q. Your practice when you ran the university's
8 strawberry breeding program was to keep a foundation
9 stock of the university's germplasm at the test
10 fields at Wolfskill Experimental Orchard, right?

11 A. I think we called it a nursery, but yes, I
12 think that's -- is that a term that's familiar to
13 you?

14 Q. Sure.

15 A. Okay.

16 Q. This nursery stock that you kept at
17 Wolfskill Experimental Orchard was basically a copy
18 of everything important in the program, right?

19 MR. LIPPETZ: Objection. Vague.

20 THE WITNESS: It was a copy of most of what
21 existed in the program at any slice of time.

22 BY MR. CHIVVIS:

23 Q. Not everything?

24 A. No, there was a second nursery down in
25 Southern California, and some of the university's

1 breeding program, right?

2 MR. LIPPETZ: I'm going to remind you just
3 to wait for him to finish, that's all.

4 THE WITNESS: I'm sorry. Okay.

5 Could I have your question?

6 BY MR. CHIVVIS:

7 Q. I'll repeat it.

8 A. Yeah, please, yeah.

9 Q. Certainly by 2012, you'd begun having
10 conversations with others outside the university
11 about starting a private strawberry breeding
12 program, right?

13 A. I'd begun the discussion about, at that
14 point, the interest in starting a private breeding
15 program, yes.

16 Q. In 2012 you spoke to representatives from
17 Lassen Canyon Nursery about starting a private
18 strawberry breeding program, right?

19 A. They were part of the group, yes.

20 Q. And Lassen grows strawberries under license
21 from the university; isn't that right?

22 A. That's correct.

23 Q. Lassen is actually really important to the
24 university strawberry breeding program, true?

25 MR. LIPPETZ: Objection. Vague.

1 THE WITNESS: Maybe you could rephrase
2 that.

3 BY MR. CHIVVIS:

4 Q. Lassen Canyon Nursery is the most important
5 nursery in California to the University of
6 California strawberry breeding program; isn't that
7 right?

8 A. Lassen Canyon Nursery is the largest
9 nursery in California and they -- I would think they
10 sell more University of California strawberry plants
11 than any other nursery.

12 Q. That makes it the university's most
13 significant licensee in California, right?

14 MR. LIPPETZ: Objection. Vague.

15 THE WITNESS: If you mean by the largest
16 producer of university plants by "significant," then
17 yes, that's accurate.

18 BY MR. CHIVVIS:

19 Q. You spoke to Lassen representatives about
20 your new venture anyway, though, right?

21 A. Define "spoke to." I'm not having any luck
22 understanding your question.

23 Q. You thought Lassen Canyon's future was with
24 your new strawberry breeding program that would be
25 private, not with the University of California,

1 right?

2 A. That seems to be a compound question. I
3 don't think we ever talked about an exclusion of the
4 University of California. I think I talked to
5 Lassen Canyon about an inclusion in a private
6 venture, yes.

7 Q. In 2012 you also spoke to representatives
8 from a Spanish company called Eurosemillas; isn't
9 that right?

10 A. That's correct.

11 Q. Eurosemillas is also a really important
12 licensee of the university's strawberry breeding
13 program; isn't that right?

14 MR. LIPPETZ: Objection. Vague.

15 THE WITNESS: Again, "important" means?

16 BY MR. CHIVVIS:

17 Q. Eurosemillas brings in more license
18 royalties to the university than any other company
19 that is a licensee of the university's strawberry
20 breeding program, correct?

21 A. That's correct, yes.

22 Q. By a significant margin, right?

23 A. I don't know.

24 Q. And again, you thought Eurosemillas should
25 be part of your private venture?

1 A. In 2011 I explored the idea of Eurosemillas
2 participating in that private venture.

3 Q. You were having these conversations in 2012
4 while you were still a university employee working
5 as head of the university strawberry breeding
6 program, right?

7 A. That's correct.

8 Q. In 2013 California Berry Cultivars was
9 formed?

10 A. That's correct.

11 Q. You're one of the owner members when it was
12 formed?

13 A. Yes, I was designated a two percent share
14 of the company when it was formed.

15 Q. So you're one of the owner members when it
16 was formed?

17 A. Correct.

18 Q. You own a piece of the company?

19 A. I would own a piece of the future company,
20 yes.

21 Q. You're still a university employee at the
22 time that California Berry Cultivars was formed?

23 A. I was still, yeah, when the documents were
24 signed, I was still a university employee.

25 Q. You were still head of the university's

1 strawberry breeding program when California Berry
2 Cultivars was formed, correct?

3 A. That's correct.

4 Q. And California Berry Cultivars' purpose was
5 to form a private strawberry breeding program,
6 right?

7 A. That's correct.

8 Q. And if the university's program were to
9 live on past your tenure at the university,
10 California Berry Cultivars' program would be in
11 competition with the university's program, correct?

12 A. If both of them were intended to go
13 forward, there would certainly be a possibility for
14 competition between them.

15 Q. You hoped that the university's program
16 wouldn't go forward and be in competition with CBC's
17 private breeding program, correct?

18 A. I think that's not accurate. I would say I
19 didn't expect it to go forward.

20 Q. You did not expect the university's program
21 to go forward and be in competition with CBC's
22 private breeding program, correct?

23 A. That's correct.

24 Q. Initially you hoped the university would
25 agree to provide CBC with access to the university's

1 Q. So CBC needed a plan B; am I right?

2 MR. LIPPETZ: Objection. Vague.

3 THE WITNESS: For CBC to proceed in the
4 time frame that we had initially planned on, it
5 would need a plan B, correct.

6 BY MR. CHIVVIS:

7 Q. Needed some other source of strawberry
8 germplasm to start the CBC's strawberry breeding
9 program, correct?

10 A. That's correct. Under any circumstances,
11 timewise or not, if the University of California had
12 refused to license its unreleased genetic material,
13 CBC would have needed to find a different source of
14 materials.

15 Q. You were involved in coming up with that
16 plan B, right?

17 A. Yes.

18 Q. In December 2013, you designed a cross plan
19 in consultation with employees of Eurosemillas?

20 A. I think it was in consultation with
21 initially it was a company called International
22 Semillas.

23 Q. International Semillas is an affiliate of
24 Eurosemillas; is that correct?

25 A. I believe that's correct, yes.

1 Q. And you sent that cross plan to Javier Cano
2 at Eurosemillas in Spain, correct?

3 A. I sent to Javier Cano. I'm not sure that I
4 sent it -- it would be accurate to say I sent it to
5 Eurosemillas.

6 Q. You sent the cross plan that you developed
7 in December 2013 to Javier Cano?

8 A. Yes.

9 Q. Who was then residing in Spain?

10 A. Yes, okay.

11 Q. And your intention was that the crosses
12 detailed in the 2013 cross plan would be performed
13 in Spain?

14 A. Yes, that's correct.

15 Q. You intended that after the crosses were
16 performed, that seeds would be collected from the
17 parent plants and then imported back into the
18 United States, correct?

19 A. The agreement, which I don't have details
20 about, but the agreement between California Berry
21 Cultivars and International Semillas, which I think
22 they call a service agreement, called for evaluation
23 of the seeds that International Semillas produced by
24 California Berry Cultivars in the United States.

25 Q. And the purpose of that was to create a

1 germplasm stock for CBC in the United States,
2 correct?

3 A. It was --

4 MR. LIPPETZ: Objection. Misstates facts.
5 Go ahead.

6 THE WITNESS: Yeah, I think that misstates
7 the facts. I think the idea was -- based on my
8 understanding of the service agreement was that the
9 evaluation of those would be done by California
10 Berry Cultivars. I don't know the specific
11 ownership rights of that material with CBC. I just
12 didn't pay much attention to that.

13 BY MR. CHIVVIS:

14 Q. You never told Liz Ponce of Lassen Canyon
15 Nursery and Javier Cano that the purpose of the
16 crosses being performed in Spain was to create
17 breeding stock in the United States for CBC's future
18 use?

19 A. I think both of them were aware of the
20 service agreement. I mean, we were creating --

21 Q. I'm not asking about the service agreement.

22 A. Right.

23 Q. I'm asking whether you ever told Liz Ponce
24 of Lassen Canyon Nursery and Javier Cano that the
25 purpose of the crosses that you directed be

1 performed in Spain was to establish breeding stock
2 for CBC in the United States?

3 A. I think that the intent was to create
4 breeding stock. The specifics of the ownership,
5 whether that be CBC or Eurosemillas or International
6 Semillas, I don't think that was clear.

7 Q. I'm not talking about --

8 A. I'm not understanding your question
9 clearly.

10 Q. -- a set of agreements or anything like
11 that, I'm talking about the intent. And --

12 A. The intent was certainly to develop
13 breeding stock.

14 MR. LIPPETZ: Stop. Stop. Could we get a
15 question? Sorry, it's a little confusing now what
16 question he's answering.

17 THE WITNESS: Okay.

18 MR. LIPPETZ: Can we start with a question?

19 MR. CHIVVIS: Yeah, please no speaking
20 objections. If he's going to talk, he's going to
21 talk. Don't cut him off --

22 MR. LIPPETZ: I object the question's
23 vague. Go ahead.

24 BY MR. CHIVVIS:

25 Q. Backing up to my earlier question, is it

1 your position that you never represented to Liz
2 Ponce at Lassen Canyon Nursery and Javier Cano that
3 the purpose of the crossbreeding that was being
4 performed in Spain at your direction was to create
5 breeding stock for CBC in the United States?

6 A. I don't remember a conversation. We
7 certainly talked about creating breeding stock, but
8 whether that was for CBC or for some relationship
9 with International Semillas, I just don't recall.
10 I'm not sure I would have ever known that.

11 Q. So you can't rule out that you said that?

12 A. I can't rule out that I said that, no.

13 Q. In 2014, while you were still an employee
14 of the University of California -- scratch that.

15 In 2014, prior to November, you're still an
16 employee of the University of California, correct?

17 A. Correct.

18 Q. And prior to your retirement, CBC was sent
19 seeds, resulting from the crosses that were
20 performed in Spain, at your direction, correct?

21 A. That's correct.

22 Q. CBC received those seeds in the
23 United States?

24 A. That's correct.

25 Q. A Eurosemillas employee brought them into

1 at the end of the growing year, correct?

2 A. We retained some of the genotypes from that
3 seedling population, I think is how I would put it
4 as a plant breeder, yes.

5 Q. The seedling population from the crosses
6 you designed in 2013?

7 A. That's correct, yes.

8 Q. And CBC still has some of those genotypes
9 in its program today?

10 A. Yes.

11 Q. Some of the parent varieties in the
12 crossing plan that you sent in December 2013 were
13 university varieties, correct?

14 MR. LIPPETZ: Objection. Vague.

15 THE WITNESS: Yes, I think so. Yes, I know
16 so, I'm sorry.

17 BY MR. CHIVVIS:

18 Q. At least one of the varieties in your 2013
19 crossing plan hadn't been released in Spain at the
20 time that you directed the cross be performed; isn't
21 that correct?

22 A. I didn't -- what do you mean by "released
23 in Spain"?

24 Q. We talked earlier about the two-year delay?

25 A. Yes.

1 BY MR. CHIVVIS:

2 Q. Right. I'm not asking about that.

3 A. Right.

4 Q. You're aware that one of the varieties in
5 your 2013 crossing plan was still within the
6 two-year window after release in California?

7 A. I was --

8 MR. LIPPETZ: Objection. Asked and
9 answered.

10 Go ahead.

11 THE WITNESS: I was aware that one of the
12 varieties had not been released for two years in
13 California.

14 BY MR. CHIVVIS:

15 Q. That variety was Merced, correct?

16 A. I believe that's the variety, correct.

17 Q. And you were aware of that in 2013 when you
18 designed the cross plan?

19 A. Aware of what?

20 Q. You were aware that it had not yet been
21 released in California for two years?

22 A. Yes.

23 Q. And just to make the question more
24 specific, you were aware, when you included the
25 Merced variety in your 2013 cross plan, that it had

1 not yet been released in California for two years?

2 A. That's correct.

3 Q. And yet you directed a cross be performed
4 in Spain using the Merced variety, correct?

5 MR. LIPPETZ: Objection. Asked and
6 answered.

7 Go ahead.

8 THE WITNESS: I think I've answered that
9 question already, but I was aware -- yes, I was
10 aware that that had been released in California, and
11 I did direct or recommend that that variety be used
12 as a parent.

13 BY MR. CHIVVIS:

14 Q. In Spain?

15 A. In Spain.

16 Q. In 2013, when CBC was formed, did you file
17 a disclosure statement with the university informing
18 them that you had taken an ownership interest in a
19 private company?

20 A. I don't recall doing that, no.

21 Q. You have no recollection of doing that?

22 A. No recollection.

23 Q. And it wouldn't surprise you if you hadn't?

24 A. No, I don't think I have, no.

25 Q. In fact, sitting here today, you believe

1 MR. LIPPETZ: Objection. Asked and
2 answered.

3 THE WITNESS: I think I already answered
4 that affirmatively, yes.

5 BY MR. CHIVVIS:

6 Q. And that the 2015 crosses, like the prior
7 set of crosses, were to be performed according to a
8 specific cross plan that you designed, correct?

9 A. I designed the cross plan that I hoped that
10 they would use, correct, yes.

11 Q. And "they" being --

12 A. -- International Semillas.

13 Q. Including Javier Cano and David Garcia
14 Sinova, right?

15 A. Yes.

16 Q. You hoped Javier Cano, David Garcia would
17 implement your crosses and then provide the seeds
18 back to CBC in the United States, correct?

19 A. That's correct.

20 Q. You didn't disclose to the university in
21 any formal way that you had designed crosses of
22 strawberry plants for another company in 2013,
23 correct?

24 MR. LIPPETZ: Objection. Vague.

25 Go ahead.

1 THE WITNESS: I don't recall any disclosure
2 of that, no.

3 BY MR. CHIVVIS:

4 Q. And you did not disclose to the university
5 in any formal way that you had designed crosses in
6 2014 for a private strawberry breeding program,
7 correct?

8 MR. LIPPETZ: Same objection.

9 THE WITNESS: Again, I think I've already
10 answered that, but the answer is correct that I have
11 not disclosed that in a formal way to the
12 university.

13 BY MR. CHIVVIS:

14 Q. The 2015 cross plan that you prepared in
15 2014 included a number of university varieties as
16 parents, correct?

17 A. Correct.

18 Q. Three of those varieties would not yet have
19 reached the end of the two-year delay window by the
20 time the crossing was to be implemented in Spain,
21 correct?

22 A. I was aware that three of the parent
23 varieties used in Spain had not been released for
24 two years in California, correct.

25 Q. And those varieties were Fronteras, Granada

1 and Petaluma, correct?

2 A. Correct, yes.

3 MR. CHIVVIS: Mark as 101.

4 (Exhibit 101 was marked for identification
5 by the court reporter and is attached
6 hereto.)

7 BY MR. CHIVVIS:

8 Q. Dr. Shaw, you're being handed what has been
9 marked as Exhibit No. 101, which is titled "A Short
10 Narrative, the Demise of the UC Davis Strawberry
11 Program, March 2016." It has beginning Bates No.
12 CBC_DS_2913 at the bottom.

13 Do you see Exhibit No. 101?

14 A. I see it, yes.

15 Q. Do you recognize it?

16 A. I can't say that I do. A lot of the
17 material looks familiar, but I don't -- can you tell
18 me the author and the date?

19 Q. Yeah. Let's start here. The date is
20 March 2016.

21 A. Okay.

22 Q. Do you see that in the upper left-hand
23 corner?

24 A. The date, okay.

25 Q. And I want to make a representation to you,

1 Q. Is that an accurate statement?

2 A. I think that's accurate. It's been a very
3 successful program.

4 Q. Second sentence.

5 "The program was initiated by Harold Thomas
6 and Earl Goldsmith in 1930, built upon briefly by
7 Richard Baker and then more extensively by Victor
8 Voth and Royce Bringhurst."

9 Is that an accurate statement?

10 A. That's correct.

11 Q. Third sentence.

12 "From the 1950s to the 1980s, the combined
13 research and breeding skills of Bringhurst and Voth
14 led to the a development of varieties that dominated
15 the California and global strawberry industry."

16 Is that an accurate statement?

17 A. That's an accurate statement.

18 Q. "That domination continued from the 1980s
19 to the present with the current generation of
20 breeder scientists, Dr. Douglas Shaw and Kirk
21 Larson."

22 Is that an accurate statement?

23 A. I think it's an accurate statement, sure.

24 Q. Next paragraph.

25 "The retirement of Bringhurst and Voth led

1 A. That's correct, yes.

2 Q. All University of California faculty
3 employees sign one of these when hired by the
4 university, is that your understanding?

5 MR. LIPPETZ: You can answer.

6 THE WITNESS: All university employees that
7 were hired in 1986 signed this version of the patent
8 agreement, yes.

9 BY MR. CHIVVIS:

10 Q. And to your knowledge, all university
11 faculty employees signed a version of the patent
12 agreement when they are hired by the university,
13 correct?

14 A. And I should say to my knowledge the other,
15 as well. I don't know that they do, but I assume
16 that they do. Certainly I did.

17 Q. To your knowledge, your colleague, Dr. Kirk
18 Larson, signed one as well, correct?

19 A. Kirk Larson signed a different version, but
20 to my knowledge he did, yes.

21 Q. Let's flip to the patent agreement that's
22 at the conclusion of the document. Do you see the
23 section on page ending Bates 50996, second page of
24 the document, the box labeled "Patent Agreement"?

25 A. Yes, I do.

1 plant sciences in 2013?

2 A. I am asking you to define "disclosure."

3 Q. Did you make any submission to the cultivar
4 release committee in 2013 at the University of
5 California?

6 A. Yes.

7 Q. One of the submissions you made to the
8 cultivar release committee was 180 varieties that
9 you proposed the cultivar release committee make a
10 determination on whether to release, correct?

11 A. That's not an accurate representation of
12 what I did.

13 Q. You didn't ask the cultivar release
14 committee to come to a recommendation on whether to
15 release 180 varieties in 2013?

16 A. That's not what the submission to the
17 University of California plant sciences department
18 cultivar release committee requested.

19 Q. But you did make a submission?

20 A. Yes.

21 Q. And it related to 180 varieties?

22 A. There was a submission that related to 180
23 genotypes, yes.

24 Q. 180 genotypes. And in that submission you
25 mentioned that the 180 varieties may be protectable

1 with a utility model-type patent, correct?

2 A. Yes, I think that's accurate. May be
3 protectable.

4 Q. There was a possibility?

5 A. Yes.

6 Q. You also requested that the cultivar
7 release committee instead consider licensing through
8 a TRP release those 180 varieties, correct?

9 A. Yes.

10 Q. In developing the release proposal, you
11 consulted with the university's innovation access
12 group, correct?

13 A. I did not, no.

14 Q. In considering your proposal, the TR --
15 excuse me, the cultivar release committee consulted
16 with innovation access, correct?

17 A. That is my understanding.

18 Q. To discuss the feasibility of patenting the
19 180 genotypes, correct?

20 A. That's correct.

21 MR. LIPPETZ: Objection. Misstates prior
22 testimony.

23 Go ahead.

24 THE WITNESS: State your question again.

25 I'm sorry, I got distracted.

1 Q. And you understand that the university had
2 decided to proceed with patenting the 168 genotypes
3 in the provisional patent application?

4 A. The university had not decided to proceed
5 with the -- with a patent that was consistent with
6 my original request, or the original request to the
7 strawberry -- to the department's cultivar review
8 committee, which was for either a utility patent or
9 for licensing under tangible research product.

10 Q. So to be clear, you thought that seeking a
11 utility patent was a valid option for the 180
12 genotypes that you submitted to the cultivar release
13 committee?

14 A. The answer to that is I did and I do. I
15 also think that, as you know, that wasn't the
16 recommendation of the plant sciences department
17 committee.

18 Q. Yeah. And I'm not focused on the plant
19 sciences department committee.

20 A. I can understand why.

21 Q. So if I'm hearing you correctly, you did
22 then in 2013 and you do now think that the 180
23 genotypes you submitted to the plant sciences
24 cultivar release committee be eligible for utility
25 patent?

1 A. I do, yes.

2 Q. Assuming that the university had decided to
3 seek patent protection on 168 genotypes from within
4 the 180, and that it was within its rights to seek
5 that patent protection as a plant patent, you agree
6 that you would have been obligated to assign all
7 your rights to the university, correct?

8 MR. LIPPETZ: Objection. Calls for a legal
9 conclusion and speculation.

10 Go ahead.

11 THE WITNESS: Yeah, I agree, I'm not
12 legally qualified to answer that question.

13 BY MR. CHIVVIS:

14 Q. If the university had decided to seek a
15 utility patent on the 180 genotypes, or even a
16 subset thereof, you agree that the patent agreement
17 would have obligated you to execute an assignment to
18 the university, correct?

19 MR. LIPPETZ: Objection. Legal conclusion.
20 Speculation, and asked and answered. Go ahead.

21 THE WITNESS: Let me answer a different
22 question that I think is maybe more to the point,
23 which is: Had the department committee decided that
24 a utility patent was the appropriate way to go to
25 list the 180, not 168, original items, I would have

1 people, you consider them carefully before you send
2 them?

3 A. I think I do, yes.

4 Q. And do you try to be truthful and accurate
5 with them when you write them?

6 A. Yes.

7 Q. So if it's an e-mail here and we are
8 looking at later and you wrote it, you consider your
9 statements carefully before you write them and
10 believe they are a truthful and accurate?

11 A. I think they are a truthful and accurate
12 representation of what I was thinking at the time.

13 Q. Fair enough.

14 Now, in this letter to Candy Volker, again,
15 page 3005, Exhibit 105, you wrote in the first --
16 it's the second paragraph, "The University of
17 California has never had a policy of releasing its
18 germplasm for general breeding purposes," correct?

19 MR. LIPPETZ: Objection. Misstates the
20 document.

21 THE WITNESS: That's what the first
22 sentence says, yes.

23 BY MR. CHIVVIS:

24 Q. And you believe that that statement was
25 accurate at the time that you made the statement to

1 Candy Volker in 1999, correct?

2 A. I believe so, yes.

3 Q. Now, in the paragraph beginning with the
4 word "Third," which is actually the fourth
5 paragraph, overlaps 3005 to 3006, do you see that
6 paragraph?

7 A. Yes, I do.

8 Q. Second full sentence you stated "We intend
9 to develop the best strawberry cultivars in the
10 world and ensure that the best cultivars in the
11 world are available to growers without restriction
12 binding fruit sales, contract, or exorbitant royalty
13 or fee structure."

14 Do you see that?

15 A. Yes, I do.

16 Q. That was an accurate statement at the time
17 you made it in 1999, correct?

18 A. Yeah, I believe that was a statement that I
19 would stand by in 1999, definitely.

20 Q. Next sentence, "A one-way transfer of our
21 germplasm to proprietary strawberry breeding
22 companies would jeopardize this goal."

23 Do you see that?

24 A. Yes, I do.

25 Q. That was an accurate statement at the time

1 you made it in 1999 to Ms. Candace Volker, correct?

2 A. That was my feeling at the time, correct.

3 Q. Last paragraph. Still on Exhibit 105,
4 Bates LITTLE, page 3006.

5 Do you see the last paragraph there?

6 A. Yes.

7 Q. First sentence states "Lastly, as mentioned
8 above, licensing of UC cultivars has always been for
9 the intended purpose of fruit production, and we
10 have routinely followed practices that discourage
11 the use of our germplasm in breeding programs."

12 That was an accurate statement at the time
13 you made it in 1999, correct?

14 A. I think that was accurate in 1999.

15 Q. And next sentence. "These practices
16 include the denial of licenses or test agreements to
17 individuals who seek to use genetic stocks as
18 parents rather than for fruit production."

19 That was an accurate statement at the time
20 you made it in 1999, correct?

21 A. I believe so, yes.

22 MR. CHIVVIS: Next in order.

23 (Exhibit 106 was marked for identification
24 by the court reporter and is attached
25 hereto.)

1 BY MR. CHIVVIS:

2 Q. Dr. Shaw, I've handed you what's been
3 marked as Exhibit No. 106. Exhibit No. 106 appears
4 to be the same as the last two pages as Exhibit
5 No. 105, except the Bates labels at the bottom start
6 with UC_STRAW2_948 and go to 945.

7 Dr. Shaw, would you agree with me that the
8 contents of Exhibit No. 106 are the same as the
9 contents of the last two pages of Exhibit No. 105?

10 A. Yes.

11 Q. The same letter from you to Candy Volker
12 about the plant sciences proposal, correct?

13 A. I don't think it was plant sciences
14 proposal, but it was the same letter as on the
15 previous document you gave me.

16 Q. So let me be clear about what exactly
17 transpired here. At some point a representative of
18 plant sciences came to Ms. Volker and suggested that
19 the university should share some of its germplasm
20 for use in a private breeding company, correct?

21 A. No, that's not accurate.

22 Q. There was no suggestion by the
23 representative of plant sciences that it had the
24 right to use university germplasm in its private
25 breeding program?

1 label on the bottom is UC_STRAW2_50992 through
2 50994.

3 The document is to Ahmad Hakim-Elahi from
4 Douglas Shaw. The date is March 27, 2000.

5 Do you have Exhibit No. 109 before you?

6 A. Yes, I do.

7 Q. What is Exhibit No. 109?

8 A. Exhibit 109 is a copy of the research
9 agreement between myself and Kirk and UC Davis that
10 agreed to provide discounts to strawberry patent
11 licensees in return for research donations.

12 Q. At the time this agreement was entered
13 into, you were concerned about the source of funding
14 for the university strawberry breeding program,
15 correct?

16 A. I believe that the reason for these
17 agreements was to stabilize and to secure strawberry
18 breeding funds for Kirk Larson and myself and our
19 program, yes.

20 Q. And you wanted these funds to be
21 stabilized, correct?

22 A. Yes. That was my objective.

23 Q. You wouldn't have signed this agreement if
24 you didn't want that?

25 A. Yeah, this was a mechanism for funding my

1 research and Kirk's research at the university.

2 Q. You had the ability to withdraw from this
3 agreement reflected in Exhibit No. 109, correct?

4 A. That's correct.

5 Q. And, in fact, you did --

6 A. That's correct.

7 Q. -- didn't you?

8 You did in 2012, if I'm not mistaken.

9 A. That's correct.

10 Q. That was two years before your retirement,
11 right?

12 A. That's correct.

13 Q. Your withdrawal from the agreement
14 reflected in Exhibit 109 resulted eventually in a
15 downtick in funding to the strawberry breeding
16 program, correct?

17 A. Removing this source of funding decreased
18 the amount of money that was available to our
19 breeding program, correct.

20 Q. Thanks. One more question on that.

21 Actually, I'll move on.

22 (Exhibit 110 was marked for identification
23 by the court reporter and is attached
24 hereto.)

25

1 intellectual property protection, correct?

2 A. I understood that was their opinion, yes.

3 (Exhibit 120 was marked for identification
4 by the court reporter and is attached
5 hereto.)

6 BY MR. CHIVVIS:

7 Q. Dr. Shaw, I've handed you what's been
8 marked as Exhibit No. 120 for identification
9 purposes. Number 120 appears to be an e-mail from
10 you, Dr. Shaw, to a number of people, including
11 Chris Van Kessel, Helene Dillard and Mary Delany.
12 The Bates numbers for the exhibit are UC_STRAW2_932
13 through 934.

14 Do you see Exhibit No. 120?

15 A. Yes.

16 Q. Exhibit No. 120 is an e-mail from you; is
17 that correct, Dr. Shaw?

18 A. Yes, it is.

19 Q. And all of the information, all of the
20 statements in Exhibit No. 120 are your statements,
21 correct?

22 A. Yes.

23 Q. And in the second full paragraph of Exhibit
24 No. 120, the first sentence you stated, "Kirk and I
25 submitted a disclosure request for utility model

1 patent to package 180 genotypes specifically for
2 their tangible value as breeding materials."

3 Is that correct?

4 A. That is correct, yes.

5 MR. CHIVVIS: Next in order.

6 THE WITNESS: Are you finished with this
7 one?

8 MR. CHIVVIS: Yeah, we are on to the next
9 one.

10 (Exhibit 121 was marked for identification
11 by the court reporter and is attached
12 hereto.)

13 BY MR. CHIVVIS:

14 Q. Dr. Shaw, I've handed you what's been
15 marked as Exhibit No. 121 for identification
16 purposes. It's an e-mail from you to Michael
17 Carriere and Kirk Larson. A number of people are
18 cc'd. The "Subject" line reads "U.S. Plant Patent
19 Application Assignment." The e-mail is dated
20 June 13, 2014. The Bates numbers at the bottom of
21 the document read UC_STRAW2_935 and go to 936.

22 Do you see that document?

23 A. Yes, I do.

24 Q. The first e-mail that appears at the start
25 of the page in Exhibit No. 121 is an e-mail from

1 BY MR. CHIVVIS:

2 Q. And it was finished so you can proceed.

3 A. If all you're asking is whether the 168
4 items on the plant patent that was filed are the
5 same as the 168 of those which I originally
6 submitted for review for either utility patent or a
7 licensing procedure through TRP, I'm in agreement
8 with you.

9 Q. That's exactly what I'm asking.

10 A. Okay.

11 Q. The 12 that were not included in the
12 provisional application that you were sent had
13 already been submitted to the U.S. Patent Office
14 separately for individual plant patents, correct?

15 A. No.

16 Q. Eleven of the 12 that were not included had
17 already been submitted individually to the
18 United States Patent Office for plant patenting,
19 correct?

20 A. Either submitted or patented, correct, yes.

21 Q. The one of the 12 not included in the
22 provisional patent application that had not yet been
23 submitted, now has been submitted for a plant
24 patent?

25 A. It is my recollection that the provisional

1 plant patent included 181.1, at least the version
2 that I saw when it was originally shipped to me in
3 hard copy only, and may have later been removed, but
4 not as of June 6.

5 Q. And when you say 181.1, you're referring to
6 the Cabrillo variety that has been now released by
7 the University of California, correct?

8 A. That's correct. That was the selection
9 number that eventually became Cabrillo.

10 Q. So to be clear, 12 of the 180 genotypes
11 that you submitted to the plant sciences release
12 committee have now been the subject of individual
13 plant patent applications to the U.S. PTO, correct?

14 MR. LIPPETZ: Oh, sorry. That's okay. Go
15 ahead.

16 THE WITNESS: I agree with that, yeah.

17 BY MR. CHIVVIS:

18 Q. And both you and Dr. Larson have assigned
19 each of those applications to the University of
20 California, correct?

21 A. That's correct.

22 Q. But you refused to assign the application
23 on the remaining genotypes, correct?

24 A. The application on the remaining genotypes
25 is not a patent on which we disclosed.

1 Q. And you refused to assign your rights in
2 that application, correct?

3 A. We refused to assign an -- a patent
4 disclosure that we never created nor disclosed.

5 Q. So you refused to assign your rights in the
6 patent application that Michael Carriere lists in
7 his e-mail of June 6, 2014, correct?

8 A. That's correct, yes.

9 MR. CHIVVIS: Go off the record for a
10 minute.

11 VIDEOGRAPHER: Going off the record, the
12 time is 3:01.

13 (Recess taken at 3:01 p.m.)

14 (Proceedings resumed at 3:14 p.m.)

15 VIDEOGRAPHER: We are back on the record.
16 The time is 3:14.

17 (Exhibit 122 was marked for identification
18 by the court reporter and is attached
19 hereto.)

20 BY MR. CHIVVIS:

21 Q. Dr. Shaw, I've handed you what's been
22 marked as Exhibit No. 122 for identification
23 purposes. It's an e-mail from you to Dean Helene
24 Dillard from the college of agricultural sciences
25 dated November 7, 2014, Bates label UC_STRAW2_70190.

1 Actually goes through 70191, but I don't see any
2 content on the last page.

3 Do you have that?

4 A. Yes.

5 Q. This is the date of your retirement?

6 A. Yes, that's the day of my retirement.

7 Q. So on November 6th, the day before your
8 retirement, Dean Helene Dillard wrote to you that
9 she'd like you to make available copies, or indicate
10 the locations, of seedlings planted in 2013.

11 Do you see that?

12 A. Yes.

13 Q. And you responded that there were no
14 selections from 2013, correct?

15 MR. LIPPETZ: Objection. Misstates the
16 record.

17 THE WITNESS: What I responded was that
18 there are no selections from 2013 crosses.

19 BY MR. CHIVVIS:

20 Q. Yes.

21 A. Okay. I see now but I haven't seen before
22 that in order to make copies of the seedlings
23 planted in 2013 -- and I'm just going to go through
24 this because this is just a misunderstanding and it
25 was probably my error. The crosses planted in 2013

1 would be 2012 crosses, and they were all there. She
2 was mistaken. She was asking about selections from
3 2013 crosses, which would have been planted in 2014.
4 And we've already talked about that.

5 Q. Yeah. And you did make some -- you did
6 perform some crosses --

7 A. I made some experimental crosses.

8 Q. -- in 2013, and there were no selections
9 made from the 2013 crosses, correct?

10 A. Right. Correct.

11 Q. So your statement is reflecting that there
12 were no selections made from the 2013 crosses?

13 A. This is correct.

14 Q. Okay.

15 A. You have to forgive me, it was the day
16 before my retirement.

17 Q. Just trying to make sure I understand.

18 (Exhibit 123 was marked for identification
19 by the court reporter and is attached
20 hereto.)

21 BY MR. CHIVVIS:

22 Q. Dr. Shaw, I've handed you what's been
23 marked as Exhibit 123, an e-mail from you to Chris
24 Van Kessel, Theodore DeJong, Joseph DiTomaso and
25 cc'ing Helene Dillard. It's dated November 6, 2014.

1 to leave the university with a copy of any of the
2 other types of information we just discussed, the
3 pedigree records, the evaluations of genotypes, et
4 cetera, correct?

5 A. Yes.

6 Q. And that was one of the things that
7 Dr. Knapp was asking you about, whether he could
8 have access to that information. Do you have that
9 understanding?

10 A. He was asking for some of that information.

11 Q. And you refused to provide it to him,
12 correct?

13 A. I think your first statement was correct, I
14 feel I'm under no obligation to provide that to him.

15 Q. You currently have that information that
16 you developed as head of the university's strawberry
17 breeding program, by "that information" I'm
18 including the pedigree information, the specific
19 evaluations of genotypes and the like?

20 A. I have a good bit of that, yes.

21 Q. You have hundreds of megabytes of Lotus
22 Notes spreadsheets and other materials relating to
23 the University of California's strawberry breeding
24 program presently sitting on one of your computers
25 that is in your possession; isn't that true?

1 MR. LIPPETZ: Objection. Misstates facts.
2 Go ahead.

3 THE WITNESS: I don't know if I have a
4 hundred kilobytes. I have some files that I took
5 with me and are on storage devices in my home.

6 BY MR. CHIVVIS:

7 Q. And those files would include complete
8 pedigrees for the 180 genotypes that you submitted
9 to the plant sciences cultivar release committee;
10 isn't that right?

11 A. I believe I have pedigrees for those 180,
12 yes.

13 Q. You have evaluation data for the
14 performance of each of those genotypes in your
15 possession right now; isn't that true?

16 A. I do, yes.

17 Q. And you haven't provided either of those
18 two sets of information to the University of
19 California, correct?

20 A. I have not provided that and I don't
21 believe I need to provide that, as your first
22 question suggested.

23 Q. But you have retained a copy for yourself?

24 A. I have copies of my research files.

25 Q. And do you understand that the university

1 BY MR. CHIVVIS:

2 Q. Putting that issue aside, on two separate
3 occasions you received an e-mail requesting an
4 assignment, correct?

5 MR. LIPPETZ: Objection. Asked and
6 answered.

7 THE WITNESS: There was a request to sign
8 an assignment for an invention. And that
9 invention -- I did not sign the assignments for that
10 invention.

11 BY MR. CHIVVIS:

12 Q. On either of the two occasions that that --

13 A. That's correct.

14 Q. -- was requested of you.

15 A. Yeah.

16 Q. Exhibit No. 126 reflects a second occasion,
17 after the first one we went over earlier, on which
18 it was requested of you that you sign an assignment
19 to the provisional plant patent application that we
20 were just discussing, correct?

21 MR. LIPPETZ: Objection. Asked and
22 answered.

23 THE WITNESS: Let me look at this first.

24 Your question again was -- or your
25 statement was that this is a document requesting

1 MR. LIPPETZ: Sorry, are we using the old
2 number or a new one?

3 MR. CHIVVIS: I'm using the old number.
4 There may be instances where I failed to do that,
5 but I had the notes for this.

6 BY MR. CHIVVIS:

7 Q. Dr. Shaw, I've handed you what's previously
8 been marked as Exhibit No. 52.

9 A. Yes.

10 Q. Now, Exhibit No. 52 is the cross plan that
11 you sent to Javier Cano in December 2013, correct?

12 A. That is correct.

13 Q. When you sent the cross plan, you were in
14 California?

15 A. I believe so, yes.

16 Q. Now, let's look at the cross plan. If
17 you'd flip to, it's a native, the beginning Bates
18 here is 883 but it's the first internal page after
19 the cover page here.

20 Do you see a statement at the top, it says
21 "SD Elite Diallel 2014"?

22 A. Yes.

23 Q. What does SD Elite Diallel mean?

24 A. SD stands for Short Day. Short Day is one
25 of two types that we breed for in strawberry. Elite

1 means -- it's not a technical term. It's broadly
2 used. It's what I use as a subset of parents that I
3 think is maybe a little better than the others. And
4 a Diallel is that particular kind of breeding design
5 that you see there, which I can spend all day
6 describing to you if you'd like, a really quick
7 genetic lesson.

8 Q. I appreciate your willingness to teach us
9 on that point but let's move ahead here.

10 A. Fine.

11 Q. Now, on the left-hand side of the SD Elite
12 Diallel 2014, there are a number of varieties
13 listed.

14 A. Yes.

15 Q. Palomar, Fortuna, Splendor, San Andreas,
16 Sabrina, Benicia and Merced.

17 Do you see that?

18 A. Yes.

19 Q. Palomar is a university-patented variety,
20 correct?

21 A. That's correct.

22 Q. And it's been subject to a university
23 patent as of 2014, correct?

24 A. It was -- okay. It was originally patented
25 earlier than that. It was -- so under "Patent," if

1 that's what you're asking?

2 Q. Correct?

3 A. Yeah.

4 Q. Same is true with and San Andreas?

5 A. Yes.

6 Q. And Benicia?

7 A. Yes.

8 Q. Merced had a patent pending at the time and
9 was still in the two-year delay window, as we
10 previously discussed, correct?

11 MR. LIPPETZ: You can answer.

12 THE WITNESS: Yes.

13 I'm trying to slow down so you don't get in
14 a fight again.

15 BY MR. CHIVVIS:

16 Q. On the column headings you see the same
17 varieties listed, correct, except for Palomar is
18 not?

19 A. Yes.

20 Q. You do have San Andreas, Benicia and
21 Merced?

22 A. That's correct.

23 Q. Then there are a number of numbers in the
24 boxes that intersect between columns and rows.

25 A. Yes.

1 Q. Each one of those numbers represents a
2 family in your breeding work, correct?

3 A. Yes, you could call it a family or a cross.

4 Q. So cross number 1 listed there has one
5 University of California-patented variety as a
6 parent, which is Palomar, correct?

7 A. That's correct.

8 Q. Cross number 2, same is true, one
9 university-patented variety as a parent, Palomar?

10 A. That's correct.

11 Q. Cross number 4 has two university-patented
12 varieties as its two parents?

13 A. That's true.

14 Q. Palomar and San Andreas, correct?

15 A. That's correct.

16 Q. Cross number 5 has one University of
17 California parent, that's San Andreas?

18 A. That's correct.

19 Q. And I'm not going to go through each one of
20 the examples here, but I'm reading the chart
21 correctly; is that right?

22 A. Everything you've said is accurate, yes.

23 Q. So for each one of these numbered families
24 or crosses, if either the row or the column
25 intersecting is a University of California parent,

1 that means that it had one to two University of
2 California parents, correct?

3 A. That's correct.

4 Q. Let's look at the SD Factorial 2014. I
5 think we've discussed what SD means, Short Day,
6 right?

7 A. Correct.

8 Q. What does Factorial mean?

9 A. Let me describe what a Diallel is first,
10 and then I can describe what a Factorial is in just
11 a couple sentences.

12 A Diallel is a breeding design where you
13 use the same set of parents as both males and
14 females. So if you can see, if you look down you
15 see Splendor as the third one down in the Elite
16 Diallel, and you also see it over as the second one
17 across the rows there? And so the cross is still
18 whatever the cross that is represented by the number
19 has the parents listed.

20 A Factorial is a little bit different, in
21 that it has two distinct sets of parents. So you
22 notice that the six parents going down the rows are
23 different than the four parents going across the
24 rows.

25 Is that your understanding?

1 Q. Yeah, I see that.

2 A. It's a different -- there's different uses
3 for these -- there's technical uses for these
4 designs.

5 Q. I understand.

6 A. Okay.

7 Q. Thank you.

8 I'm going to go to the Diallel chart first.
9 You mentioned mother and father plants.

10 A. Right.

11 Q. Are the column headings one or the other?

12 A. They can be. We don't keep male and female
13 separate in our breeding design. You make the
14 cross, but we pay no attention to which is the seed
15 parent and which is the pollen parent.

16 Again, without getting too complicated, in
17 some crops in some situations that can make a
18 difference. In a strawberry it makes no difference
19 at all.

20 Q. And you provided no direction with respect
21 to whether the columns or the rows should be the
22 father or mother plants?

23 A. No.

24 Q. Same is true for the Factorial?

25 A. Absolutely.

1 Q. Okay. Back on to the Factorial. 2014
2 Short Day. We already discussed that Palomar,
3 Benicia and Merced are University of California
4 varieties, correct?

5 A. That's correct.

6 Q. Mojave, which appears in the last column
7 heading, is also a University of California variety,
8 correct?

9 A. Yes, that's correct.

10 Q. And it would have been patented by the time
11 this crossbreeding was to be performed, correct?

12 A. Yes.

13 Q. The same understanding applies to this
14 Factorial chart, in that if a row reveals that the
15 university variety is on the left-hand side, then
16 that means it had that university variety as one of
17 its parents, correct?

18 A. That's correct.

19 Q. And if the column reflects a university
20 variety, if you follow that column down, then that
21 would be the parent for everything in that column,
22 correct?

23 A. That's correct.

24 Q. So, for instance, if you looked at
25 number 45, cross number 45, that would have Merced

1 as one of its parents and Mojave as the other,
2 correct?

3 A. That's correct.

4 Q. Moving on to the DN Elite Diallel 2014,
5 that's the next one down. Do you see that?

6 A. Yes.

7 Q. DN stands for Day Neutral?

8 A. Correct.

9 Q. And a number of the varieties in this Day
10 Neutral Elite Diallel 2014 are UC-patented
11 varieties, correct?

12 A. That's correct.

13 Q. Albion is a University of
14 California-patented variety, correct?

15 A. Correct.

16 Q. Monterey is a University of
17 California-patented variety?

18 A. Correct.

19 Q. San Andreas is a University of California
20 patented variety?

21 A. Correct.

22 Q. Portola is a University of
23 California-patented variety?

24 A. Correct.

25 Q. I've already discussed Merced.

1 Same logic applies to this chart that we
2 discussed above for the Short Day Elite Diallel
3 except it's Day Neutral?

4 A. Correct.

5 Q. Let's go to the DN Factorial 2014, Day
6 Neutral Factorial 2014. Same logic applies as to
7 the difference between Factorial and Diallel, right?

8 A. Correct.

9 Q. Again, we have a number of
10 university-patented varieties listed here, correct?

11 A. Correct.

12 Q. Palomar is a University of
13 California-patented variety, correct?

14 A. Correct.

15 Q. Benicia is a University of
16 California-patented variety?

17 A. Correct.

18 Q. Mojave, again, University of
19 California-patented variety?

20 A. Correct.

21 Q. Monterey?

22 A. Correct.

23 Q. Albion?

24 A. Correct.

25 Q. And Portola?

1 A. Correct.

2 Q. Now, when you use a variety name like
3 Albion, you expect that it's understood that you're
4 referring to a plant with a unique genotype. Here
5 we are covered by University of California plant
6 patent, correct?

7 A. This would be the same Albion that is -- a
8 copy of the same plant that was patented and
9 released it as Albion in -- you know, in California,
10 correct, yeah.

11 Q. So it's a plant that's previously been
12 asexually reproduced in California?

13 A. At some point in time, yes.

14 Q. In the series of propagating the plant, its
15 lineage traces back in an unbroken chain to a plant
16 that, in fact, you originally developed at the
17 University of California strawberry breeding
18 program, correct?

19 A. That's correct.

20 Q. The same genetics in the Albion that would
21 have been used in Spain at your direction as the
22 genetics of the plant Albion that you developed at
23 the University of California?

24 A. In theory that's correct, yes.

25 Q. And you'd expect that that would be

1 correct?

2 A. It would be largely correct in almost all
3 circumstances, yes.

4 Q. Unless a mistake was made?

5 A. Or a mutation.

6 Q. Yeah. Now, on the third page of
7 Exhibit 52, that is just a duplication of the second
8 page using an internal code for each one of the
9 varieties, correct?

10 A. That's correct, yes.

11 Q. So you could see they roughly mirror each
12 other, and if one were to take these numbers and
13 match them up with the varieties listed on the
14 second page, it will all match up, and for each one
15 of the cross numbers, you could translate between
16 the two charts, correct?

17 A. Yes, that's correct.

18 Q. You sent someone to oversee the crossing
19 work being performed in Spain to make sure it was
20 being done correctly, correct?

21 A. I did not go to Spain in 2014, and I don't
22 remember that anyone from CBC in California was
23 there when they were doing the crossing. That was
24 handled by International Semillas.

25 Q. You went to Spain earlier, though, and

1 instructed individuals that are employees of
2 International Semillas and Eurosemillas the steps on
3 how to perform a proper cross according to your
4 direction, correct?

5 MR. LIPPETZ: Objection. Assumes facts.

6 THE WITNESS: I think it's better to say
7 that we commented and perhaps consulted on their
8 procedures because they already knew how to do
9 crosses.

10 BY MR. CHIVVIS:

11 Q. But you have a particular way of doing
12 crosses and you wanted to make sure they were
13 following appropriately your methods and techniques
14 to get the most effective usage of the cross plan
15 that you developed, correct?

16 A. I would say that's not entirely accurate.
17 I would say everybody does crosses almost the same
18 way. Anybody who's running a strawberry breeding
19 program with the idea of doing cultivar development
20 would use roughly the same techniques.

21 I was there in 2013 and at the time
22 International Semillas was just gathering facilities
23 to do crosses, and I did interact with them on
24 crossing for, I think, one day of my four-day stay.

25 Q. And that involved some training, correct?

1 A. Certainly would have worked together on
2 their technique, yes.

3 Q. To make sure they used what you thought
4 were best practices in performing the crosses
5 according to the style you'd become accustomed,
6 correct?

7 A. I would say it was more of an interchange.
8 They had a couple people who had worked for breeding
9 programs before that were then beginning to work for
10 them. So yeah, I mean, we shared any ideas that we
11 had about, you know, growing the plants, what we
12 would do for crosses, some thoughts about how we
13 labeled our crosses and things like that, how we
14 would recommend it be done.

15 Q. And you made certain recommendations?

16 A. We made recommendations, sure.

17 Q. And they followed them, correct?

18 MR. LIPPETZ: Objection. Speculation.

19 THE WITNESS: I can't really tell you
20 whether they followed them or not, but we did make
21 recommendations, yes.

22 BY MR. CHIVVIS:

23 Q. The facilities that you toured in Spain in
24 2013, who were those facilities owned by?

25 A. In 2013 the facility that we visited was an

1 old cotton gin that I believe was still owned by
2 Eurosemillas.

3 Q. Where was that facility located?

4 A. I can't remember the name of the town, but
5 it would be west of Cordova, oh, maybe 40 or
6 50 miles, something like that.

7 Q. Huelva?

8 A. No. Huelva is really way far away.

9 Q. Ejica?

10 A. Ejica.

11 Q. Ejica, yeah. That's the Catalanian
12 pronunciation?

13 A. It's not Catalanian, it's Andalucian.

14 Q. More knowledgeable about Spain than me.

15 All right, Ejica. That's spelled
16 E-J-I-C-A, correct?

17 A. That's the facility that I visited then,
18 yes.

19 Q. And that was the correct spelling?

20 A. I think so.

21 Q. So the crosses you designed in 2013 were
22 performed by International Semillas at Eurosemillas
23 facilities in Ejica, Spain?

24 A. I was there in 2013. I don't know where
25 the crosses were done in 2014. At some point they

1 moved the crossing work to a different facility
2 closer to Seville, and again, I don't know the name.

3 Q. Santo Tomas?

4 A. It could be. I don't know the name.

5 Q. It's clearly somewhere in Spain, though?

6 A. Yeah, I can tell you roughly where.

7 Probably 20 miles east of Seville.

8 Q. On an island?

9 A. No, no. No.

10 Q. Not that far?

11 A. Seville is well inland.

12 Q. So in 2013 you prepared this cross-claim --
13 excuse me, cross plan -- let's just scratch that and
14 start over.

15 In 2013 you prepared the cross plan shown
16 in Exhibit No. 52. You sent it to Javier Cano in
17 Spain. Crosses were performed in Spain according to
18 the plan.

19 A. Yes.

20 Q. And the resulting seeds were sent back into
21 the U.S. to CBC, correct?

22 A. That's correct.

23 MR. CHIVVIS: Previously marked as 53.

24 (Exhibit 53 was marked for identification
25 by the court reporter and is attached

1 hereto.)

2 MR. CHIVVIS: Let's go off the record for a
3 tape change.

4 VIDEOGRAPHER: Going off the record, the
5 time is 4:44.

6 (Recess taken at 4:44 p.m.)

7 (Proceedings resumed at 4:49 p.m.)

8 VIDEOGRAPHER: This marks the beginning of
9 DVD number 4 in the deposition of Douglas Shaw.
10 Going back on the record, the time is 4:49.

11 BY MR. CHIVVIS:

12 Q. Dr. Shaw, I handed you what's been
13 previously marked as Exhibit No. 53.

14 Do you have that before you?

15 A. I do.

16 Q. Exhibit No. 53 is a crossing plan that you
17 sent to Javier Cano and others in 2014 for crosses
18 that would be performed in 2015, correct?

19 A. That would be correct.

20 Q. You sent it from California in the
21 United States, correct?

22 A. That's correct.

23 Q. And first internal page, I guess it's
24 page 2 of the document, not Bates-labeled, lists a
25 number of Diallel and Factorial charts much like we

1 saw in Exhibit No. 52, correct?

2 A. That's correct.

3 Q. There's a set of Northern Diallel and
4 Factorials and then now Southern Diallel and
5 Factorials, right?

6 A. That's correct.

7 Q. With the Northern Diallel and Factorial
8 charts, we see two sets of charts side by side; one
9 has varieties by a variety name, let's say, and
10 another by a code.

11 A. That's correct.

12 Q. Is that a fair statement?

13 A. Yes.

14 Q. As with Exhibit No. 52, we can match those
15 two up and the code actually corresponds with a
16 particular variety name, correct?

17 A. That's correct.

18 Q. Now, looking at Northern Elite Diallel
19 2015, there are a number of University of California
20 varieties listed there; is that right?

21 A. That's right.

22 Q. There's San Andreas, Benicia, Monterey, and
23 I think that's it; is that right?

24 A. You're looking at the Northern Elite
25 Diallel?

1 Q. Uh-huh.

2 A. That's correct.

3 Q. The same provisos about how to read this
4 chart that we discussed with Exhibit No. 52 apply?

5 A. That's correct.

6 Q. Each one of the University of California
7 varieties listed in the Northern Elite Diallel 2015
8 had already -- would have already been patented by
9 the time the crossing was to be performed, correct?

10 A. That is correct.

11 Q. Let's look at the Northern Factorial 2015.
12 Do you see that?

13 A. Northern Factorial 1?

14 Q. Yes, sorry, there's two of them. There's a
15 Northern Factorial 1, 2015, and a Northern
16 Factorial 2, 2015, right?

17 A. Correct.

18 Q. Northern Factorial 1, 2015, has a number of
19 University of California varieties in it, correct?

20 A. Correct.

21 Q. Those include Monterey, San Andreas,
22 Benicia, Palomar and Mojave, correct?

23 A. That's correct.

24 Q. All those University of California
25 varieties would have been patented by the time

1 crossing was to be performed according to this
2 chart, correct?

3 A. That is correct.

4 Q. Now let's look at Northern Factorial 2,
5 2015. There are a number of University of
6 California varieties listed on that chart as well;
7 is that right?

8 A. That's correct.

9 Q. Included among the University of California
10 varieties are Albion, Portola, Merced, Petaluma,
11 Granada and Fronteras, correct?

12 A. That's what I'm reading, yes.

13 Q. Albion, Portola and Merced would have been
14 patented by the time this crossing was to be
15 performed, correct?

16 A. Correct.

17 Q. Petaluma, Granada and Fronteras were
18 subject to pending patent applications and in the
19 pre-commercialization two-year delay window at the
20 time this crossing was to be performed, correct?

21 A. That's my understanding, yes.

22 Q. So your understanding is they were not yet
23 commercially released in Spain at the time crossing
24 was to be performed?

25 MR. LIPPETZ: Objection. Misstates prior

1 testimony.

2 THE WITNESS: We've been through this
3 before. I've already answered.

4 BY MR. CHIVVIS:

5 Q. Please answer.

6 A. I already answered this question.

7 Q. And the answer was?

8 MR. LIPPETZ: You can answer again. It's
9 okay.

10 THE WITNESS: Okay. The answer was that
11 I'm unaware. I don't have the facts to decide
12 whether these were in a pre-commercialization state
13 or were they commercially purchased.

14 Q. Your understanding of how the two-year
15 delay worked, though, would be that they were not
16 available for commercial purchase in Spain at the
17 time crossing was to be performed, correct?

18 MR. LIPPETZ: Objection. Misstates his
19 prior testimony.

20 THE WITNESS: My understanding is that they
21 would not have been for sale to commercial growers,
22 but whether they are commercially available for sale
23 would depend on elements of the contract that I have
24 no reason to understand or have knowledge about.

25

1 BY MR. CHIVVIS:

2 Q. Now, there are a number of Southern charts
3 here as well, Southern Elite Diallel, 2015, Southern
4 Factorial 1 and 2 as well, right?

5 A. Correct.

6 Q. The Southern Elite Diallel lists Merced,
7 Petaluma, Granada, Fronteras as University of
8 California-patented varieties that you proposed to
9 be used in those crosses, correct?

10 A. That's correct.

11 Q. And the same issue with Petaluma, Granada
12 and Fronteras applies; it was your understanding it
13 was in the two-year delay window, those varieties
14 were in the two-year delay window at the time
15 crossing was performed?

16 MR. LIPPETZ: You can answer.

17 THE WITNESS: Same answer as last time,
18 yes.

19 BY MR. CHIVVIS:

20 Q. And that answer is yes?

21 A. The answer is that I don't have the ability
22 or the knowledge to decide whether they were in the
23 commercial production there or not based on the
24 absence of knowledge about the license.

25 Q. But putting the license aside, you were

1 aware that they were within the two-year period
2 after release in California?

3 A. It had not been two years since they were
4 released in California by the time they were
5 included in this crossing design.

6 Q. And they would not have been outside that
7 two-year window by the time the crossing was to be
8 performed?

9 A. I believe that's correct, yeah.

10 Q. Now let's look at Southern Factorial 1,
11 2015.

12 You see varieties listed there: Merced,
13 Petaluma, Granada, Fronteras, Monterey and San
14 Andreas, correct?

15 A. That's correct.

16 Q. And Merced, Petaluma, Monterey and San
17 Andreas were all patented at the time crossing was
18 to be performed, right?

19 A. That's correct.

20 Q. And Granada and Fronteras and Petaluma
21 would have been in that two-year delay window period
22 at the time the crossing was to be performed,
23 correct?

24 MR. LIPPETZ: You can answer.

25 THE WITNESS: That's correct.

1 BY MR. CHIVVIS:

2 Q. Southern Factorial 2, 2015, UC varieties
3 there are Benicia and Mojave and Palomar, correct?

4 A. That's correct.

5 Q. All three of those varieties would have
6 been patented at the time the crossing suggested by
7 your cross plan was to be performed, correct?

8 A. That's correct.

9 Q. And as with the previous cross plan, you
10 sent it from California to individuals in Spain with
11 the intention that they perform the crosses in Spain
12 and then send the resulting seeds from those crosses
13 back to CBC in the United States, correct?

14 A. That's correct.

15 MR. CHIVVIS: This is 54.

16 (Exhibit 54 was marked for identification
17 by the court reporter and is attached
18 hereto.)

19 BY MR. CHIVVIS:

20 Q. Dr. Shaw, I've handed you what's been
21 marked as Exhibit No. 54 for identification
22 purposes.

23 Do you see Exhibit No. 54?

24 A. Yes, I do.

25 Q. Exhibit No. 54 is a cross plan that you and

1 Kyle VandenLangenberg developed for crosses to be
2 performed in Spain, correct?

3 A. That's correct.

4 Q. And so the record clear, Kyle
5 VandenLangenberg is another breeder that is employed
6 by California Berry Cultivars, correct?

7 A. That's correct.

8 Q. You and Kyle sent the cross plan in Exhibit
9 No. 54 to individuals in Spain with the intention
10 that they perform these crosses in Spain and then
11 send the results of those crosses as seeds back into
12 the United States to CBC, correct?

13 A. That's correct.

14 Q. And you were in California at the time that
15 you and Kyle VandenLangenberg sent this cross plan
16 to individuals in Spain?

17 A. I believe so, yeah.

18 Q. Let's walk through the varieties listed.

19 This set up appears to be somewhat similar
20 to Exhibit No. 53, in that we have both the Northern
21 and Southern set of the Diallel and Factorial
22 charts; is that a fair assessment?

23 A. That's a fair assessment.

24 Q. The Northern Elite Diallel 2016 includes
25 University of California varieties Monterey, San

1 Andreas, Mojave, Petaluma, Granada, Fronteras and
2 Cabrillo; is that right?

3 A. Yes.

4 Q. In fact, all of the varieties listed in the
5 Northern Elite Diallel 2016 are University of
6 California varieties?

7 A. That's correct.

8 Q. Now, all the varieties listed in the
9 Northern Elite Diallel 2016 would have been patented
10 by the time crossing was to be performed in Spain,
11 except for Cabrillo, right?

12 A. That's correct.

13 Q. Cabrillo was subject to a pending patent
14 application at the time, right?

15 A. That's my understanding, yes.

16 Q. And Cabrillo was in the two-year delay
17 window at the time the crossing was to be performed
18 in Spain, according to the Northern Elite Diallel
19 chart, right?

20 A. As before, it had not been two years since
21 the release of Cabrillo in California.

22 Q. Right. So it was still in that two-year
23 delay window, fair?

24 A. It had not been two years since it had been
25 released.

1 Q. I think you're agreeing with me, right?

2 MR. LIPPETZ: Objection. Asked and
3 answered a number of times.

4 BY MR. CHIVVIS:

5 Q. You still can answer.

6 A. It had not been two years since the release
7 of Cabrillo in California.

8 Q. And at the time the crossing was to be
9 performed, you don't have any understanding that
10 University of California policy as to the two-year
11 delay had changed, correct?

12 A. No.

13 Q. And by "No," you mean I was correct that
14 the policy hasn't changed?

15 A. Is that what you asked the first time, had
16 the policy changed or not?

17 Q. Yeah.

18 A. I have no knowledge that the policy had
19 changed.

20 Q. Thank you. Northern Factorial 1, 2016
21 lists Albion, Monterey, San Andreas, Cabrillo and
22 Merced, all of which are University of California
23 varieties, correct?

24 A. Correct.

25 Q. Same issue with Cabrillo, it had not yet

1 been two years since its release in California by
2 the time crossing was to be performed?

3 A. That's correct.

4 Q. Northern Factorial 2, 2016 lists Benicia,
5 Mojave, Petaluma, Granada, Fronteras, Palomar and
6 Portola, all of which were University of California
7 patented varieties?

8 A. That's correct.

9 Q. All those varieties would have been
10 patented by the time crossing would have been
11 performed, right?

12 A. That's my understanding, yes.

13 Q. Under other crosses a number of patented
14 varieties are listed. That appears under the
15 Northern Factorial 2016 chart.

16 Do you see that?

17 A. Yes.

18 Q. So among the varieties listed there in
19 cross 136, you have both Petaluma and Merced, those
20 are both University of California-patented
21 varieties, correct?

22 A. Correct.

23 Q. 137 has Fronteras and Merced, those are
24 both University of California-patented varieties,
25 correct?

1 A. That's correct.

2 Q. 138 has Fronteras, which is a University of
3 California-patented variety.

4 A. That's correct.

5 Q. 139 has Granada, which is a University of
6 California-patented variety?

7 A. That's correct.

8 Q. Number 140 has Mojave, which is a
9 University of California-patented variety; is that
10 right?

11 A. That's right.

12 Q. Moving to the Southern Elite Diallel 2016
13 on the next page, the only University of
14 California-patented variety I see here is Benicia;
15 is that a fair assessment?

16 A. That's correct.

17 Q. And that would have been patented by the
18 time crossing was to be performed?

19 A. That's correct.

20 Q. Southern Factorial 1, 2016 lists Mojave,
21 Merced, Petaluma, Granada and Fronteras as
22 University of California-patented varieties, right?

23 A. That's correct.

24 Q. They all would have been patented by the
25 time crossing was to be performed?

1 A. Correct.

2 Q. Southern Factorial 2, 2016, lists Monterey,
3 San Andreas, Cabrillo, Palomar and Benicia as
4 University of California patented varieties, right?

5 A. That's correct.

6 Q. And all of those except for Cabrillo would
7 have been patented by the time crossing was to be
8 performed; is that right?

9 A. That's correct.

10 Q. Cabrillo was still within the two-year
11 window because it hadn't been two years since its
12 release in California, right?

13 A. It had not been two years since its release
14 in California.

15 Q. Other crosses listed at the bottom,
16 number 67 says Rania (phonetic) and Monterey.
17 Monterey was a University of California patented
18 variety, right?

19 A. Correct.

20 Q. And it was patented at the time crossing
21 was to be performed according to this cross plan?

22 A. Yes.

23 Q. So let me get this straight. The cross
24 plan that's represented as Exhibit No. 54 here, is a
25 cross plan that you developed with Kyle

1 VandenLangenberg?

2 A. Correct.

3 Q. The two of you sent it from California to
4 individuals in Spain?

5 MR. LIPPETZ: Objection. Misstates his
6 prior testimony.

7 Go ahead.

8 THE WITNESS: Ask the question again,
9 please.

10 BY MR. CHIVVIS:

11 Q. Kyle VandenLangenberg and you sent this
12 cross plan to individuals in Spain?

13 A. I believe we did, yeah.

14 Q. With the intention that the crosses in this
15 cross plan be performed in Spain, correct?

16 A. Correct.

17 Q. And that the resulting seeds would be
18 shipped back into the United States to CBC, correct?

19 A. That's correct.

20 Q. Now, for each of the cross plans listed as
21 Exhibit Nos. 52, 53 and 54, when CBC received the
22 seeds from the individuals who sent them in Spain,
23 it then germinated those seeds; is that correct?

24 A. That's correct.

25 Q. And grew the seedlings?

1 A. That's correct.

2 Q. And at the end of the first evaluation
3 period with those seedlings, made decisions about
4 which seedlings to continue into the next year of
5 the pipeline process for CBC, correct?

6 A. That's true for 2014 and 2015.

7 Q. We are still in the period of evaluation
8 for 2016?

9 A. Correct.

10 MR. CHIVVIS: Break?

11 MR. LIPPETZ: Sure.

12 VIDEOGRAPHER: Going off the record, the
13 time is 5:10.

14 (Recess taken at 5:10 p.m.)

15 (Proceedings resumed at 5:27 p.m.)

16 VIDEOGRAPHER: We are back on the record.
17 The time is 5:27.

18 BY MR. CHIVVIS:

19 Q. Dr. Shaw, in 2014 you inquired with Javier
20 Cano about him receiving you and Kirk in Spain to
21 supervise all CBC crosses for the following year;
22 isn't that correct?

23 A. If I inquired about that I never followed
24 up on it because I did not go to Spain in 2014.

25 Q. This is a statement in 2014 about you

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

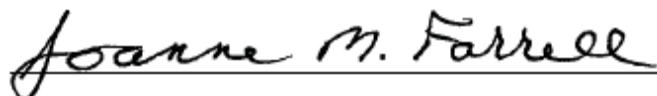
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings review of
15 the transcript { } was {X} was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: December 15, 2016

23 
24

25 Joanne M. Farrell, CSR No. 4838